

# SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE ("Settlement Agreement") is entered into between ABC Software Corporation (hereinafter "Plaintiff"), and Widget Corporation (hereinafter "Defendant").

## RECITALS

- A. On or about January 12, 2009, Defendant sent an advertisement by facsimile transmission to Plaintiff Propel Software Corporation.
- B. On or about February 1, 2009, Plaintiff sent a Demand letter to Defendant, requesting resolution of the dispute prior to filing a complaint.
- C. The parties desire to enter into this Settlement Agreement in order to provide for certain payments in full settlement and discharge of all claims which are or might become the subject of a Complaint, upon the terms and conditions set forth herein.

## AGREEMENT

The parties hereto agree as follows:

### 1. Release and Discharge

In consideration of Defendant's agreement to make the payments called for herein, the Plaintiff completely releases and forever discharge the Defendant, of and from any and all past, present or future claims, demands, obligations, actions, causes of action, rights, damages, costs, loss of services, expenses and compensation which the Plaintiff now has, or which may hereafter accrue or otherwise be acquired by plaintiff, on account of, or in any way growing out of the faxed advertisement.

### 2. Consideration

In consideration of the release set forth above, Defendant hereby agrees to pay Plaintiff one thousand dollars (\$1000.00). Defendant further agrees to no longer send advertisements by facsimile transmission to Plaintiff. Defendant agrees to liquidated damages in the amount of ten thousand dollars (\$10,000.00) for each fax advertisement sent to Propel Software Corporation after execution of this Agreement.

### **3. Attorneys' Fees**

Each party hereto shall bear its own attorneys' fees and costs arising from the actions of its own counsel in connection with the Demand and this Settlement Agreement and incurred prior to the date of execution of the Agreement. In any action of any kind relating to this Agreement, the prevailing party shall be entitled to collect reasonable attorneys' fees and costs from the non-prevailing party in addition to any other recovery to which the prevailing party is entitled.

### **4. Warranty of Capacity to Execute Agreement**

The Plaintiff represents and warrants that no other person or entity has or has had any interest in the claims, demands, obligations, or causes of action referred to in this Settlement Agreement, except as otherwise set forth herein, and that it has not sold, assigned, transferred, conveyed or otherwise disposed of any of the claims, demands, obligations, or causes of action referred to in this Settlement Agreement.

### **5. Entire Agreement and Successors in Interest**

This Settlement Agreement contains the entire agreement between the Plaintiff and the Defendant with regard to the matters set forth herein and shall be binding upon and inure to the benefit of the executors, administrators, personal representatives, heirs, successors and assigns of each.

### **6. Representation of Comprehension of Document**

In entering into this Settlement Agreement, the Plaintiff represents that it has relied upon the legal advice of its attorneys, who are the attorneys of its own choice and that the terms of this Settlement Agreement have been completely read and explained to it by its attorneys, and that those terms are fully understood and voluntarily accepted by it.

### **7. Governing Law**

This Settlement Agreement shall be construed and interpreted in accordance with the laws of the State of California.

### **8. Additional Documents**

All parties agree to cooperate fully and execute any and all supplementary documents and to take all additional actions which may be necessary or appropriate to give full force and effect to the basic terms and intent of this Settlement Agreement.

**9. Effectiveness**

This Settlement Agreement shall become effective on execution.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Joe Average  
CEO of ABC Software Corporation  
Plaintiff

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Defendant

The foregoing release was explained to Plaintiff and executed in accordance with our directions and advice.

Dewey, Cheatum & Howe LLP

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
James Smith, Esq.  
Attorney for Plaintiff